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**ILLINOIS-AMERICAN WATER COMPANY :**  
**CITIZENS UTILITIES COMPANY OF ILLINOIS :**  
**And CITIZENS LAKE WATER COMPANY :**

**Petition For Approval of Proposed Reorganization :**  
**and Affiliated Interest Agreements, Issuance of :**  
**Common Stock and Debt Securities and Assumption :**  
**of Affiliated Interest Agreements :**

**Docket 00-0476**

**REPLY AND MOTION OF ILLINOIS-AMERICAN WATER COMPANY**

**I. INTRODUCTION**

On April 24, 2001 Illinois-American Water Company ("Illinois-American" or "IAWC" or the "Company") filed its Verified Motion For Leave To File Late Filed Exhibits Instantly (the "Motion"). Illinois-American sought leave to file Late-Filed Exhibit 1 and Late-Filed Exhibit 2 (jointly, the "Late-Filed Exhibits"). In this Reply, Illinois-American will respond to the Responses to the Verified Motion, which were submitted by Staff and IWC on April 27, 2001.

In the Responses, Staff and IWC raise certain issues related to admissibility of the Late-Filed Exhibits. Those issues will be addressed in Section II below. Much of the discussion in the Responses, however, relates not to admissibility of the Late-Filed Exhibits, but to the significance or appropriateness of the data presented. The discussion related to significance or appropriateness of the data will be addressed in Appendix "A," which is supported by Mr. Ruckman's Affidavit (Attachment 2 to this Reply and Motion). IAWC has used this format, so that if the Late-Filed Exhibits are admitted, the filing by IAWC of an additional evidentiary Reply to the comments of Staff and IWC regarding the Exhibits may be unnecessary. As will

be discussed, if the Late-Filed Exhibits are admitted and Staff and IWC file evidentiary Responses thereto, IAWC seeks the admission of Late-Filed Exhibit 3 as its evidentiary Reply.

## **II. ISSUES REGARDING ADMISSIBILITY**

In its Response, Staff asserts (p. 2) that "[n]othing in the Rules of Practice ("Rules") provides authority for a party on its own motion, to file a late-filed exhibit in response to a HEPO." While it is true that the Rules do not expressly refer to filing of a late-filed exhibit "in response to a HEPO," the Rules do indicate that late-filed exhibits may be considered at the discretion of the Hearing Examiner. Section 200.875(c) of the Rules provides, in pertinent part, that:

- (c) Nothing in this Section shall be construed to limit the discretion of the hearing Examiner of the Commission, for good cause shown, to consider late-filed exhibits for admission into evidence.

83 Ill. Adm. Code § 200.875(c) (emphasis added). Accordingly, the admissibility of the Late-Filed Exhibits is to be determined by the Hearing Examiner in accordance with the Standards of Discretion (83 Ill. Admin. Code § 200.25).

As indicated in Section 200.25(a), "the principal goal of the hearing process is to assemble a complete factual record to serve as basis for a correct and legally sustainable decision" 83 Ill. Adm. Code § 200.25(a) (emphasis added). Thus, it is this goal which is of paramount importance.

It is undisputed that the reorganization proposed in this proceeding is subject to the provisions of Section 7-204 of the Illinois Public Utilities Act (220 ILCS 5/7-204), which, inter alia, requires findings with regard to the reorganization's effect on IAWC's ability to "raise necessary capital on reasonable terms and maintain a balanced capital structure" (§ 7-204(b)(4)) and "ability to provide adequate, reliable, efficient, safe, and least-cost public utility service"

(§ 7-204(b)(1)). With respect to these standards, both IAWC and the Staff addressed the significance of the financial ratios calculated first by IAWC (IAWC Ex. 2.1R) and then by the Staff on Staff Schedule 10.1. The reorganization also is subject to the provisions of Section 7-204(c), which requires findings, inter alia, with regard to how "any savings resulting from the proposed reorganization" should be allocated. To that end, IAWC submitted IAWC Exhibit 3.6R, which shows the allocation of net savings under IAWC's proposed SSP, Staff's position and IIWC's position in this proceeding. The information shown on these Exhibits was addressed by the parties in evidentiary filings and briefs. As discussed in IAWC's Motion, the Late-Filed Exhibits update the information shown in these Exhibits to demonstrate the effect of the Proposed Order's recommended savings sharing plan.

The Proposed Order recommends approval in this proceeding of a savings sharing approach not specifically proposed by any party. As a result, it was not possible prior to issuance of the Proposed Order to submit evidence regarding the effect of the Proposed Order on: (i) the financial ratios shown on Staff Schedule 10.1; or (ii) the allocation of net Savings shown on IAWC Exhibit 3.6. Specifically, contrary to the assertions of Staff (Resp., p. 5), it was not possible to present this evidence through cross-examination of Staff witnesses or in rebuttal or surrebuttal evidence. IAWC submits, however, that such information is relevant to the findings which the Commission is required to make under Sections 7-204(b)(1), 7-204(b)(4) and 7-204(c) and, therefore, necessary for the development of a complete factual record.

IAWC believes that an opportunity to update Staff Schedule 10.1 and IAWC Exhibit 3.6R to reflect the effect of the Proposed Order also should be provided in the interest of "fairness," the second listed Standard for Discretion. Section 200.25(b). Fairness, of course, also requires a reasonable opportunity for Staff and IIWC to respond to the material which

IAWC submitted. With regard to this standard, IAWC notes that, as shown in the Affidavit of Ronald D. Stafford that accompanied the Verified Motion, the Late-Filed Exhibits utilize the same methodologies as were used in the original Exhibits to calculate the information shown. In this regard, it should be noted that Staff itself prepared Staff Schedule 10.1 and is, therefore, familiar with the methodology utilized to prepare the Schedule. Also, on April 25, 2001, the day after Staff and IWC received the Verified Motion, Illinois-American provided Workpapers which detailed the calculations shown on the Late-Filed Exhibits. Mr. Stafford also attempted to contact the Staff witness who prepared Staff Schedule 10.1 by telephone to determine whether additional information was needed. Mr. Stafford's call was not returned. IWC also has not requested additional information regarding the Late-Filed Exhibits. Illinois-American, however, remains willing to provide either Staff or IWC with additional information they reasonably require with regard to the Late-Filed Exhibits.

The process envisioned by Illinois-American to address the Late-Filed Exhibits included: (i) filing of the Late-Filed Exhibits with supporting Affidavit; (ii) immediate voluntary exchange of workpapers and/or requested information; (iii) submission at or about the time that Replies on Exceptions are due of any appropriate evidentiary comments and/or other Responses to the Late-Filed Exhibits in a form suitable for inclusion in the record; and (iv) opportunity for IAWC to file an evidentiary reply to the Responses. Illinois-American believes that this procedure is fair to all parties, and consistent with the three remaining Standards for Discretion under Section 200.25, "Expedition," "Convenience" and "Cost-Effectiveness."

Staff asserts (Resp., p. 2) that there are errors in the Late-Filed Exhibits. As will be discussed, however, all but one of the points raised by Staff are without merit. IAWC, however, does agree with Staff's assertion (Resp., p. 4) that the Cash from Operations to Interest and Cash

from Operations to Total Debt Ratios should be recalculated to reflect cash flow resulting from decreased income taxes. To that end, IAWC has prepared Late-Filed Exhibit 1 (Revised) (Attachment 1 to this Reply and Motion), which is supported by the Affidavit of Mr. Ruckman (Attachment 2). As shown, the effect of the correction identified by Staff on the two referenced ratios is minimal. IAWC requests Leave to File IAWC Late-Filed Exhibit 1 (Revised) for inclusion in the record in place of Late-Filed Exhibit 1, and to submit a corrected copy of its Brief on Exceptions, with Late-Filed Exhibit 1 (Revised) included as a replacement for the current Attachment 1.

Contrary to the suggestion of Staff (Resp., p. 5), the circumstances here are not comparable to those in Docket 93-0303, where supporting documentation for a utility's proposed rate base additions was presented late in a proceeding. In this case, IAWC has presented relevant evidence regarding the effect of the Proposed Order at the first opportunity, using methodologies and formats addressed in the record and prior pleadings. This information was also presented at a time when other parties can reasonably respond. Applying the Standards of Discretion discussed above, the Commission has admitted and relied upon Late-Filed Exhibits in many prior proceedings. *Alton Water Company*, Dockets 83-0433 and 84-0052 (consolidated), slip op at 11-12 (May 30, 1984) (Commission allowed committed construction expenditures corresponding to estimated construction costs to be incurred through December 31, 1984, based on evidence submitted by utility in rebuttal evidence and late filed exhibits); *See also, Illinois-American Water Company*, Docket No. 85-0202, slip op. at 3, 20 (March 5, 1986) (allowance for capital additions based on updated data shown in late-filed Exhibits).

For its part, IAWC (Resp., 2) finds it obvious that IAWC timed the filing of the Verified Motion so that the Late-Filed Exhibits could be discussed in IAWC's Brief on Exceptions.

Illinois-American, however, did not have any of the documents filed April 24, 2001, including the Late-Filed Exhibits, completed and available for filing at an earlier date. After receiving the Proposed Order, IAWC worked diligently to prepare its Brief on Exceptions, Verified Motion, Late-Filed Exhibits and accompanying Affidavit of Mr. Stafford. A goal was to complete and file all of these materials in time to discuss the Late-Filed Exhibits in the Brief on Exceptions. This procedure eliminated the need for a separate filing discussing the Late-Filed Exhibits and permits Staff and IAWC to respond to the discussion of the Late-Filed Exhibits at the time of the scheduled Reply.

IWC (Resp., p. 2) goes on to suggest that the Commission refuse to admit the Late-Filed Exhibits prior to issuance of its Order, but later grant rehearing for the purpose of considering the Late-Filed Exhibits. This, of course, makes no sense at all. For the reasons discussed above, Illinois-American believes that the data regarding the Proposed Order's effect is essential to proper evaluation of the Proposed Order, and that it is both necessary and appropriate to admit such data before the Commission's deliberations with regard to a final Order begin.

IWC (Resp., p. 3) states that the "exhibits offer nothing of relevance." Late-Filed Exhibit 1, however, shows that, even with the savings sharing plan recommended in the Proposed Order, financial deterioration of the type depicted on Staff Schedule 10.1 results. Late-Filed Exhibit 2 shows that the Proposed Order's savings plan results in an unfair and inappropriate allocation of net savings. The record cannot be deemed complete without the submission of evidence regarding the Proposed Order's effect.


### **III. COMMENTS REGARDING THE SIGNIFICANCE OR APPROPRIATENESS OF THE DATA PRESENTED**

As discussed above, comments regarding the significance or appropriateness of the data presented are addressed in Appendix "A," which is marked as Late-Filed Exhibit 3 and supported by the Affidavit of Mr. Ruckman.

WHEREFORE: (i) the arguments made in the Responses of Staff and IWC should be rejected; (ii) Illinois-American should be granted leave to file Late-Filed Exhibit 1 (Revised) and Late-Filed Exhibit 2; (iii) Illinois-American should be granted leave to file a corrected Brief on Exceptions, with Late-Filed Exhibit 1 (Revised) substituted for the current Attachment 1; (iv) Staff and IWC should be directed to file Responses to the Late-Filed Exhibits, if any, at or about the time that Replies to Exceptions are due; (v) if the Late-Filed Exhibits are admitted and evidentiary Responses thereto are filed by Staff and IWC, IAWC should be granted leave to file Late-Filed Exhibit 3 as its evidentiary Reply; and (vi) IAWC should be granted leave to file a further evidentiary Reply to Responses filed by Staff and IWC, if deemed necessary, within two business days after the Responses are filed.

Dated: April 30, 2001

Respectfully submitted,



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